UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of Earl E. Gibson, Charging Party, Leadership Council for Metropolitan Open Communities and Earl E. Gibson, Intervenors, v. Timothy Bangs and Karin Simpson, Respondents.	HUDALJ 05-90-0293-1 Decided: January 5, 1993

Daniel M. Starr, Esquire
For Respondent Simpson

Ira A. Moltz, Esquire
For Respondent Bangs

Edward Voci, Esquire
For the Intervenors

Elizabeth Crowder, Esquire
For the Secretary and the Complainant

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed on December 22, 1989, by Earl E. Gibson ("Complainant"). The complaint was filed with the U.S. Department of Housing and Urban Development ("HUD") and alleges violations of the Fair Housing Act, 42 U.S.C. §§

3601, *et seq*., as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 120 Stat. 1626 (1988) ("Fair Housing Act" or "Act") based on Complainant's race. It is adjudicated in accordance with Section 3612(b) of the Act and HUD's regulations that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On June 19, 1992, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD's Region V Counsel in Chicago, Illinois, issued a Determination Of Reasonable Cause And Charge Of Discrimination against Karin Simpson and Timothy Bangs ("Respondents"), alleging that they had engaged in discriminatory practices on the basis of race in violation of §§ 804(a) and (b) of the Act, which are codified at 42 U.S.C. §§ 3604(a) and (b) and incorporated into HUD's regulations that are found at 24 CFR 100.60 and 100.65 (1989-92).

More specifically, the Regional Counsel, on behalf of the Secretary of HUD and the complainant, alleged that the respondents treated Complainant differently from white prospective tenants and did not allow the complainant to rent the subject dwelling because the complainant is black. A hearing was conducted in Chicago on September 1-2, 1992, and the parties were ordered to submit post-hearing briefs by October 16, 1992. That time was extended on the request of the intervenors to October 30, 1992 and again on the request of Respondent Bangs to November 16, 1992. Thus, this case became ripe for decision on this last named date[1].

Findings of Fact

Complainant Earl Gibson is black. (T 217, 429)[2]. At the time of the hearing, he was divorced and had four children, ranging in age from 9 months to 9 years, living with him in an apartment in Milpitas, California. (T 391). At the times relevant to this proceeding, Complainant was living with his pregnant wife and two children at 10321 South Racine, Chicago, Illinois. (T 392). This was a small basement apartment, and he wanted a bigger apartment for his family that would also be closer to the area in which he was a sales representative. (T 393).

The Leadership Council for Metropolitan Open Communities (LCMOC) is a not-for-profit fair housing organization that helps people obtain housing within a number of programs and also investigates allegations of discrimination and helps with legal services needed in those situations. (T 213). LCMOC intervened in this proceeding in its own right and on behalf of the

[1] Notwithstanding their request for additional time within which to file a post-hearing brief, the intervenors failed to make such a filing. Respondent Simpson's attorney filed a letter on October 12, 1992, stating that this respondent would not be filing a post-hearing brief due to the expense of the transcript and preparation of a brief. Respondent Bangs also failed to file a post-hearing brief, and no explanation was offered for that failure. Thus, the Secretary's post-hearing brief, filed on behalf of himself and the Complainant, was the only such brief considered.

[2] The transcript of the hearing is cited with a capital T and a page number. The Secretary's exhibits are identified with a capital S and an exhibit number; those of the Respondents are identified with an R.

Complainant. It assisted Gibson in the early stages of his case and conducted tests, as described later in this decision, to determine whether discrimination was a factor in the events that transpired.

Respondent Timothy Bangs is white and, at all times relevant to this proceeding, owned the apartment house at 9312 South Kedzie, Evergreen Park, Illinois with his brother, Tom Bangs. (T 114-15). During the time of these events, Respondent Bangs resided in the subject apartment house. (T 114). He is an electrician by trade and, at all times relevant, he worked full time at construction projects. (T 189-90). Prior to buying the buildings in 1988 he had no real estate, administrative or managerial experience, and no other sources of income were revealed at the hearing. (T 190).

Respondent Karin Simpson, who is also white, was, at the time of the events described, the departing tenant in the subject apartment in Bangs's building. She and her husband had a lease for the apartment which was to expire on December 31, 1989. However, earlier in the autumn the Simpsons had bought a house and wanted to move out of the apartment by the end of November, 1989. The events of this case resulted from her attempts to obtain a sub-lessor for her apartment for the purpose of avoiding the loss of a month's rent.

Bangs had instructed Simpson to obtain the name and telephone number of each prospective tenant and to give that information to him along with telling him "something about them." (T 32-43). Bangs did not ask Simpson to inform him of people's race. (T 35). He also instructed Simpson not to give his phone number to prospective tenants and not to tell them that he made his home in the same apartment building. (T 34). Bangs had less interest than Simpson in quickly finding a new tenant since there was over a month remaining on Simpson's lease. (T 190).

The dwelling that is involved in this case is a two-bedroom apartment in a six-unit apartment building at 9312 South Kedzie in Evergreen Park, Illinois. The building contains four two-bedroom units and two one-bedroom units. Respondent Bangs also owns a second six-unit apartment building at 9308 South Kedzie. (T 159).

On November 13, 1989, Gibson responded by phone to an advertisement that Karin Simpson had placed in a newspaper and that had been included in a list of prospective apartments that was prepared for him that day by the LCMOC. (T 435, 445). He made an appointment with Simpson to view the unit that evening at 8:30. (T 26-28). Simpson did not know from the phone conversation that Gibson is black. (T 27-28).

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[3] Timothy Bangs's testimony on ownership of the apartment house was contradictory. While it became clear that Tom Bangs is also an owner, as I have found in the text, he was never made a party to these proceedings.

[4] A "dwelling" includes "any building, structure, or portion thereof which is occupied as, or intended for occupancy as, a residence by one or more families." 42 U.S.C. § 3602(b).

When Gibson came to the door, Simpson asked, "May I help you?" (T 29, 30, 395). Further, Gibson felt that she appeared shocked to see him and that her attitude towards him became "a little disgusted" and "less enthusiastic" than she had been on the phone. (T 396, 528, 538). She gave him a brief viewing of the apartment and accepted his business card on which he had added his home phone number on the back. (T 39, 43, 399). During this visit, Gibson told Simpson that the rent was right for him and that he wanted the apartment. (T 397).

Later that evening, Simpson took Gibson's business card to Bangs, along with the name and number of another prospective tenant, and gave it to him. She then told Bangs that Gibson is black, but she did not relate to him the other impressions she had of him, which were that she thought Gibson to be "a very nice gentleman" and that he looked like a "respectable business man." (T 32, 42, 98). She also testified that she was not surprised when she saw that Gibson is black and that it did not bother her that he is. (T 100).

On the following day, November 14, Gibson phoned Simpson to again state that he wanted to "secure" the apartment. (T 400). Since he wanted to ensure that he did all he needed to do to secure the apartment, he inquired about an application upon which he could provide his social security account number and other information for a credit check, and he asked for Bangs's phone number and whether he could call him directly. (T 399, 400). Simpson called him "pushy", and said that either she or Bangs, "if he saw fit," would call him back after she talked to Bangs. (T 401). She was very short with him in this conversation and it ended with her hanging up on him. (T 401, 538).

Later that day, Simpson told Bangs about Gibson's phone call, and Bangs gave her a spiral notebook and told her to get the social security number, place of employ- ment, phone numbers and signature of each prospective tenant so that he could have credit checks done. (T 55). However, he did not instruct Simpson to get this information from Gibson, and he did not call Gibson himself. (T 67-71, 124-24, 127, 204-5).

Gibson filed his charge with the LCMOC by phone in the early afternoon of November 15. (T 446-47; S 4). On November 18, 1989, a white tester from LCMOC, calling himself Alexander Edwards, phoned Simpson to inquire about the subject apartment. He made an appointment to view it that afternoon. While viewing the apartment, Simpson invited him to write his social security number and signature in the spiral notebook. When "Edwards" stated that he wanted to bring his wife to see the

apartment, Simpson told him that he could do so and that the landlord would want to meet them to approve them anyway. (S 5A).

On November 21, 1989, at the suggestion of LCMOC, Gibson again phoned Simpson to inquire whether he could bring his wife to see the apartment. (T 401). Simpson told him that she was very busy moving some of her belongings to her new house and did not have the time right then. (T 72, 401). She added that the landlord would call him if he wanted to do so. (T 401). She asked Gibson for his social security number, but he declined to give it to her because he did

not want to state his number on the phone and because he wanted to provide it as part of an application for the apartment. (T 72, 104-5, 401).

Simpson did not invite Gibson to come at any time with his wife, she did not tell him that a formal application was not necessary, and she did not tell him he needed to come in to sign the spiral notebook. (T 72, 77, 401, 540). She again hung up on Gibson. (T 544). She believed that Bangs should call Gibson, and she told Gibson that Bangs would do so if he wanted to. (T 113, 401). Simpson also never called back the other person who's name she gave to Bangs along with Gibson's. (T 96).

On November 26, 1989, "Edwards" returned to the subject apartment with his "wife," Ann Berten, another white LCMOC tester. They met with Simpson and Tim Bangs. When the testers asked whether any other people were interested in the unit, Simpson said to Bangs that they would have to discuss that. (T 87; S 5B). Bangs has no recollection of this being said at the meeting, who he met with, or the date; only that he met at some time with people other than the eventual tenant. (T 174).

On November 28, 1989, Gibson called the Simpson apartment for the fourth time and spoke to Paul Simpson. (T 402). In that conversation, Paul Simpson told Gibson that the apartment was no longer available. (T 408). Gibson left his phone numbers and asked for Karin Simpson to call him. (T 550). On November 30, Gibson went to the building again and saw a note signed with a woman's name posted on the mailboxes.
(T 407). It was addressed to "Tim," and it said that the writer's son-in-law would like to have the apartment and requested a phone call in response. (T 407).

After getting the name of the apartment owner from LCMOC, on December 2, 1989, Gibson called the Bangs apartment and spoke with Respondent Bangs's brother, Tom Bangs. (T 409). He stated his interest in the apartment, whereupon Tom Bangs told him it was no longer available. Gibson also told Tom Bangs that he would then be interested in and any other unit in the two buildings that might become available.
(T 196). He left his phone numbers with Tom Bangs and asked him to ask his brother to call, but Tom did not give them to Tim and, in fact, failed to tell Tim that it was Gibson who had called. (T 196, 409). Gibson called and spoke to Tom again the next day, but neither brother ever returned Gibson's phone calls. (T 409, 416). In fact, Gibson never spoke with Tim Bangs during his attempts to apply for the apartment.
(T 522). By this date, according to Tim Bangs's testimony, the new tenant had already moved into the apartment. (T 153, 199).

The successful applicant for the apartment was a white man named Lou Cavallone. (T 142). He had visited the apartment on November 18, 1989 at which time he also met Tim Bangs. (T 142). Bangs testified that he completed a credit check of Cavallone on November 20, called him on November 22 to tell him he was "all set" and to return, and met with him again on November 23, 1989. (T 135, 143, 146). On this last named date, according to Bangs, Cavallone gave Bangs $490 in cash as a deposit for the apartment. (T 140). However, Bangs was unable to

give Cavallone a written lease at that time because he did not have any blank forms. (T 140, 147). Bangs testified that he could have these dates confused. (T 188). Nonetheless, according to Bangs, he and Cavallone agreed that the apartment had been leased for a six-month period commencing on December 1, 1989, and Cavallone moved in by that date. (T 135). Bangs also told Simpson that he had re-leased, rather than sub-let, the apartment.
(T 135-140).

When Bangs bought the two buildings in 1988 all the tenants were white. (T 109, 176). The activities described above constituted only the second time that Bangs leased one of his apartment units. (T 150, 189). He handled the first vacancy himself by putting an ad in the newspaper. He rented that unit to a woman without doing a credit check. She was the first person to respond to the ad and Bangs "liked her a lot" because she was a police woman. (T 180).

Prior to renting the Simpson apartment to Cavallone, the only other prospective tenant that Bangs met was "Edwards." (T 174). However, he dropped "Edwards" from his list of possible tenants when he called "Edwards's" claimed employer and was told no such person worked for it. (T 175). He did not try contacting "Edwards" himself because he felt that "Edwards" had lied to him about his employment. (T 177). He testified that he did not contact Gibson because he lost Gibson's card and Gibson had declined to give his social security number for a credit check. (T 178). Also, by that time, Bangs expected Gibson to return with his wife to see the apartment, and he had finished the credit check on Cavallone and had found him acceptable as a tenant.

(T 204-06). Bangs also stated that Gibson had never offered to put down a deposit for the apartment. (S 9).

After his experience attempting to rent the Simpson apartment, Gibson continued his search for a new place to live. He called ten or eleven landlords of other advertised units and viewed seven of them. (T 411-12). During this period, he had repeated arguments with his wife regarding their housing situation. Gibson testified that, "She did not want to move anyplace where they didn't want us." (T 412). The arguments strained their relationship. In February 1990, they separated, and he moved in with a friend.

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[5] Cavallone was not called as a witness, and Bangs was never questioned by the Secretary or the intervenors as to why he would have permitted the "Edwards" couple to view the apartment on November 26 if he had considered it rented and had accepted a deposit for it on November 23. It is probable that the agreement with Cavallone was made after November 26.

[6] This tenant was not called as a witness.

[7] The record does not establish when the credit check of "Edwards" took place, *i.e.*, whether it was before or after he and his "wife" visited the apartment and Tim Bangs on November 26, and whether it was before or after Cavallone was accepted and paid his deposit on the apartment.

(T 412). Gibson claimed that he believes that the acts of the respondents led to the breaking up of his marriage and the premature birth of his daughter. (T 432-32).

In February of 1990, Gibson rented a home with a friend where his share of the rental amount was $700 per month. He remained there until the next October. (T 413). He then moved to California where he again shared housing with a friend for a period of four months before taking up residence with his children at his address at the time of the hearing, in Milpitas. (T 432).

At the hearing, Gibson testified that he was still emotionally disturbed by the conduct of the respondents. He had suffered from lack of sleep, emotional stress and embarrassment, especially when he had to tell his son that he had not been able to get the new apartment for the family. (T 428-29). He remained angry and hurt. (T 429). He became reluctant to look for apartments in white areas because he was afraid that the people he might come into contact with might discriminate against him because he is black. (T 429). Nonetheless, at the time of the hearing, he was living in a "very caucasian community." (T 433).

Gibson missed 11 full days of work to file his complaint, attend meetings with his attorney, and attend the hearing. He earns an average of $192 per day. (T 422-23). Nonetheless, he stated his losses related to the hearing to be $750. (T 519). Since moving to California, Gibson has telephoned the HUD office in Washington, D.C. on four occasions, the HUD investigator in Chicago on 60 occasions, and the Chicago Regional Counsel's office on 13 occasions, spending an average of 15 minutes per call discussing his case. (T 420-21). However, he did not submit any phone bills or state the costs of the calls, nor did he claim any costs associated with his later searches for a new place to live.

Simpson makes about $240 per week after taxes; her husband is unemployed, and he had received about $580 per month in benefits for the six months prior to the hearing. (T 559-60, 564). The couple operates a ceramic crafts business from the house. (T 565). Simpson's daughter requires psychiatric counseling, but Simpson has not sent her to her follow-up sessions because she could not afford them; the initial evaluation cost Simpson $150. (T 561). Simpson herself has a "bulging disk" in her back, but she cannot afford treatments. (T 560). She carries a monthly mortgage of approximately $800 per month which was one month overdue at the time of the hearing. At the time of the hearing, she had a bank account containing about $1000. (T 562). Also, at the time of the hearing, she did not know what her legal fees for this case would be. (T 563).

Applicable Law

The Fair Housing Act was enacted to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), *cert. denied*, 422 U.S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, [even] simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio), *aff'd in relevant part*,

661 F.2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

Thus, it became unlawful to:

> ... refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise deny, a dwelling to any person because of race [or] color .... 42 U.S.C. § 3604(a); 24 CFR 100.50(b)(1) and (3) (1989-92).

It is also unlawful to:

> ... discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race [or] color .... 42 U.S.C. § 2604(b); 24 CFR 100.50(b)(2).

The legal analysis to be applied to a case brought under the Act depends upon whether the evidence offered to prove the alleged violation is direct or indirect. When direct evidence of discrimination is presented by the Secretary, this evidence, if it constitutes a preponderance of the evidence, is sufficient to support a finding of discrimination. *See Pinchback v. Armistead Homes Corp.*, 907 F.d 1447, 1452 (4th Cir. 1990); *HUD v. Jerrard*, Fair Housing - Fair Lending (P-H) ¶ 25,005, at 25,087 (HUDALJ Sept. 28, 1990; *HUD v. Murphy*, Fair Housing - Fair Lending (P-H) ¶ 25,002, at 25,052 (HUDALJ July 13, 1990).

However, if there is no direct evidence of discrimination, the analytical framework to be applied is the three-part test that is applied in employment discrimination cases that are brought under Title VII of the Civil Rights Act, as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *HUD v. Blackwell*, Fair Housing - Fair Lending (P-H) ¶ 25,001, 25,005 (HUDALJ No. 04-89-0520-1, Dec. 21, 1989) (hereinafter cited as *Blackwell*). This statement of law was upheld by the United States Court of Appeals in *Secretary, HUD On Behalf Of Herron v. Blackwell*, No. 90-8061 (11th Cir. Aug. 9, 1990). (hereinafter cited as *Blackwell II*). *See also, Pollitt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1989); Schwemm, *supra*, 323, 405-10 & n. 137. That burden of proof test is as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence .... Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, undiscriminatory [sic] reason" for its action .... Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext ....

Pollitt, supra, at 175, *citing McDonnell Douglas, supra*, at 802, 804.

The shifting burdens of proof format from *McDonnell Douglas*, which is spelled out above, is designed to assure that the "plaintiff [has] his day in court despite the unavailability of direct evidence." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), citing *Loeb v. Truxton, Inc.*, 600 F.2d 1003, 1014 (1st Cir. 1979) (disapproved on other grounds in *Trans World Airlines, Inc., supra*).

The Court in *McDonnell Douglas* also accepted the Court of Appeals's approval of the elements of the *prima facie* case that had come up from the District Court. *See* 463 F.2d 337, 353. These elements, as appropriately modified to suit a fair housing case rather than an employment discrimination case, are now well established in federal law and were also adopted by this forum in its seminal case of *Blackwell*. In that case it was stated that,

> to establish a *prima facie* case, the government must prove that (1) Complainants are members of a racial minority; (2) Complainants applied for and were qualified to purchase the property at issue; (3) Complainants were rejected by Respondent; and (4) after the rejection, the property remained available.

Citing Phillips v. Hunter Trails Community Ass'n, 685 F.2d 184, 190 (7th Cir. 1982); *Robinson v. 12 Lofts Realty, Inc*., 610 F.2d 1032, 1038 (2nd Cir. 1979); *Williams v. Matthews Co*., 499 F.2d 819, 826 (8th Cir.), *cert. denied*, 419 U.S. 1021, 1027 (1974); *Pollitt, supra*, at 175; *Davis v. Mansards*, 597 F. Supp. 334, 345 (N.D. Ind. 1984). If established, the *prima facie* case creates a rebuttable presumption that unlawful discrimination has occurred. *See, e.g., Williams, supra*, at 826; *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 254 (1981).

Once a *prima facie* case is established, the burden of proof shifts to the respondent to show a legitimate, nondiscriminatory reason for his actions. *See Burdine, supra*, at 253; *McDonnell Douglas, supra*, at 802; *Pollitt, supra*, at 175. To meet this burden, the evidence offered by the respondent must raise a "genuine issue of fact" as to whether he discriminated against the complainant. *See Burdine, supra*, at 254-55. Furthermore, that evidence must be admissible and must enable the trier of fact "rationally to conclude" that the respondent's actions have not been motivated by "discriminatory animus." *Id*. at 257.

If the respondent meets this shifting burden of proof, the government must then demonstrate that the reason for the respondent's actions is pretextual and that race did in fact play a part in his decision making process. At this point, the government need not prove that race was the sole factor motivating respondent's decision. It need only show, by the preponderance of the evidence, that race is one of the factors that motivated the respondent in his dealings with the complainant. *See, e.g., Robinson, supra*, at 1042; *United States v. Mitchell*, 580 F.d 789, 791 (5th Cir. 1978); *Pollitt, supra*, at 176.

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[8] In this case, rental of property, rather than its purchase, was attempted, but this does not change the element.

Discussion

The Secretary has established a *prima facie* case. First, it is undisputed that Gibson, because of his race and color, is a member of a protected class. As to the second element, I find that he applied for and was qualified for the apartment; *i.e.*, he was qualified so far as Simpson and Bangs knew at the stage toward applying for the apartment that they permitted him to proceed. It is not necessary, for purposes of making the *prima facie* case, to actually fill out an application with qualifying information. It is enough that a prospective tenant states his interest in renting and that he has adequate resources to do so. In this case, since Gibson was not asked to qualify by way of a formal application, it is enough that he viewed the apartment, stated his interest, appeared to be a reputable person, and stated that the rent was right for him.

In this set of facts, the third element of the *prima facie* case is not met by a showing of explicit rejection, such as when a landlord states that he does not rent to people with children. Instead, this element is met by the Secretary's showing that Gibson's attempts to apply for the apartment were met with multiple instances of passive resistance; *i.e.*, Gibson was implicitly rejected by Respondents' nonaction. For example, when Gibson stated that he wanted to provide his social security number on an application, Simpson failed to tell him that a formal application was not necessary and that he need only provide the number and his signature. When he stated that he wanted to return with his wife for a second viewing of the apartment, he was not invited to do so. Most importantly, he stated right from the beginning that he was interested in renting the apartment. His phone numbers were taken, and he was told that he would be called; but he was never called.

As to the final element, it is clear that the apartment remained available after Gibson's rejection. He initially visited the apartment and said that he wanted it on November 13, and he called Simpson to say that he was interested in it on November 14. It was in this conversation that Gibson clued Simpson and Bangs to the need to collect information for the purpose of checking out prospective tenants' suitability. Nonetheless, when Bangs told Simpson to start getting signatures and social security numbers, neither of them took measures to treat Gibson equally by calling him back to ask for his data. Subsequently, "Edwards" made two visits to the apartment, one of which was with his "wife," and Cavallone made two visits, during one of which it was decided that he should have the apartment. In all of these visits these parties were treated as prospective tenants in that they were guided to the next step of the process, whereas Gibson

[9] Frequently, an applying prospective tenant is denied eligibility for an unlawful reason in an initial phone conversation. For example, in cases based upon familial status, they are denied eligibility when they state that they have children. In such instances, no actual test of qualification has been made. It is enough, for purposes of the second element of the *prima facie* case, that the applicant be a person responding to an offer to rent. Only when a person is actually permitted to submit a formal application can that person be held to actual criteria for eligibility, such as minimum monthly net income. *HUD v. DiBari*, Fair Housing - Fair Lending (P-H) ¶ 25,036 (1992); *HUD v. Frisbie*, Fair Housing - Fair Lending (P-H) ¶ 25,030 (1992); *HUD v. Baumgardner*, Fair Housing - Fair Lending (P-H) ¶ 25,006 (1990).

was not. Thus, as stated above, I find that a *prima facie* case of housing discrimination has been made.

Simpson's reasons for the manner with which she treated Gibson's attempts to be considered are pretextual. She claims, for example, that it was up to Bangs, not her, to phone Gibson. But she made no attempt to ensure that he did so. When Bangs decided to request certain information and signatures from prospective tenants, Simpson failed to take the minor steps necessary to include Gibson in this requirement. In fact, she hid the requirement from him by failing to tell him on the phone what he needed to do to apply for the apartment. That she had given the card with Gibson's phone numbers to Bangs is nonsense, since it was she who Gibson repeatedly called, and she could have asked for his numbers again. She could have clarified the landlord's requirements in any one of these calls.

Further, Simpson resisted Gibson's efforts to be treated equally by declining to afford him an opportunity to view the apartment for a second time with his wife. That she was busy with her move at the moment of his call is no excuse since she could have made an appointment for another time. She stated repeatedly that she was anxious to sublet the apartment so she would not lose a month's rent, but she nonetheless excluded Gibson from consideration equal to that afforded the other applicants even though he was her earliest applicant. That she stated Gibson's race in her initial comments to Bangs about him is sufficient indication that consideration of race, in the form of discriminatory animus, played a part in her dealings with Gibson.

Bangs's reasons for the nature of his dealings with Gibson are likewise pretextual. He says he did not call Gibson because he lost or misplaced his phone numbers. But he never told Simpson to get those numbers again the next time she was in contact with Gibson. He says he expected Gibson to return with his wife, but that was never a prerequisite for tenancy. He says Gibson never put down a deposit, but this requirement was never put into evidence and, moreover, Gibson was never asked for a deposit. Bangs says that he was not much interested in subletting the apartment and that it was all up to Simpson to do, but he required her to submit names and other information to him and reserved to himself the decision on who the next tenant should be. He never ensured that Gibson was included in consideration.

By authorizing Simpson to act, in a limited way, on his behalf Bangs made Simpson his agent for renting the apartment. Thus, even in the light most favorable to Bangs, he is tied to the events that excluded Gibson from equal treatment, even though he never saw or spoke with Gibson. He says that it was up to Simpson to find a new tenant. He and Simpson also testified that he never asked to know the race of prospective tenants, and there is no evidence that he discarded Gibson's card rather than simply losing it. Nonetheless, it is beyond dispute that Bangs, as the owner and landlord of the building, had a non-delegable duty under the Fair Housing Act to prevent discrimination against prospective tenants, and thus he may be held liable for his agent's discriminatory acts even if Simpson was acting specifically outside her scope of responsibility by including race as a qualifying consideration. *See Walker v. Crigler*, CA 4, No. 91-1542 (October 5, 1992) (landlord liable for manager's discrimination even though landlord had sent manager a memorandum stating specifically that otherwise qualified tenants were not to be denied the right

to rent his properties solely because of race or other legally prohibited categories). *See also HUD v. Jeffre*, Fair Housing - Fair Lending (P-H) ¶ 25,020, at 25,256 (1991) (while authority may be delegated, responsibility may not; the duty not to discriminate is nondelegable), *citing United States v. Mitchell*, 335 F. Supp.1004, 1007 (N.D. Ga. 1971), *aff'd sub. nom., United States v. Bob Lawrence Realty*, 474 F.d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973) (holding a principal liable even though it neither instructed its agent to discriminate nor ratified that discrimination).

Ultimate Conclusions

The Secretary has established that Respondents denied Complainant the opportunity to obtain housing for himself and his family on the basis of race. By acting in this manner, Respondents have violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. §§ 3604 (a) and (b), and applicable sections of HUD's regulations that are found at 24 CFR 100.50(b)(1)-(3).

Remedies

Section 812(g)(3) of the Act provides that where an administrative law judge finds that a respondent has engaged in discriminatory practices, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or equitable relief." 42 U.S.C. § 2613(g)(3). That section further states that the "order may, to vindicate the public interest, assess a civil penalty against the respondent." The maximum amount of a civil money penalty is dependent upon whether the respondent has been adjudged to have committed prior discriminatory practices. Where the respondent has not been adjudged to have committed any prior discriminatory practices, any civil money penalty assessed against the respondent cannot exceed $10,000. *See also* 24 CFR 104.910(b)(3) (1990). Otherwise, the maximum allowable civil money penalty is $25,000.

The government, on behalf of itself and the complainant, has prayed for: (1) an award of damages to compensate Complainant for the difference in his rent in the amount of $1,890, for costs associated with searching for another apartment in the amount of $480, for costs associated with his complaint in the amount of $320, for the cost of telephone calls in the amount of $400, for lost wages in the amount of $2,112, for emotional injury in the amount of $40,000, and for lost housing opportunity in the amount of $2,500; (2) a civil penalty in the amount of $10,000 for Bangs and $1,000 for Simpson; and (3) injunctive relief to ensure that Respondent Bangs does not engage in unlawful housing practices in the future.

Damages

The Fair Housing Act provides that relief may include actual damages suffered by the Complainant. 42 U.S.C. § 3612(g)(3). In this case, the government, on behalf of Complainant, claims the difference in the cost of the housing denied to Complainant and the cost for housing that he eventually found. To recover the increased cost of alternative housing, a complainant

must have made a reasonable effort to seek comparable housing and to minimize damages. In fair housing cases, a failure to "cover" has been taken to preclude recovery for the greater cost of alternative housing,

even where the defendant did not actively set out to prove during the proceeding that the complainant failed to seek comparable housing and minimize damages. Thus, where a complainant has reasonably sought to find comparable and comparably-priced housing, he should recover the greater expense of the alternative housing. That the alternative housing in a particular case costs more than the denied housing does not necessarily mean that the alternative housing is not comparable; one must look to size, style, proximity to transportation, and other characteristics of the property.

In this case, Complainant looked at approximately seven additional apartments, but in the end he separated from his wife and moved into a house with a friend, where his share of the rent was $210 per month more than the apartment would have been. The secretary seeks to recover the difference in rent for the nine months that Complainant stayed with his friend before moving to California. However, there was no showing that Complainant was forced to get the bigger, more expensive lodging. On the contrary, his whole housing need changed when he went from wanting a two-bedroom apartment for himself and his family to wanting to share a large house just for himself. Thus, since the alternative housing was not comparable there will be no award of damages for the difference in rent for the nine months, even though Respondents did not prove that comparably-priced alternative housing was readily available.

The Secretary also asks for $480 to compensate Complainant for the time spent in looking at the seven other apartments before settling on the house with his friend. The Secretary claims that Gibson spent 20 hours on this effort and asks that he be compensated for his time at his approximate earning rate of $24 per hour. This is a reasonable request which is reasonably

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[10] *See* D. Dobbs, *Handbook on the Law of Remedies*, § 7.1 (1973). According to Dobbs, a plaintiff has the burden of proving damages, and a defendant has the burden of proving that the plaintiff should have minimized those damages.

[11] *See, e.g. Smith v. Ancjor Building Corp*, 536 F.d 231, 234 n.4 (8th Cir. 1977)(plaintiff declined defendant's offer of apartment);*Young v. Parkland Village, Inc*, 460 F.Supp. 67, 71 (D. Md. 1978).*Cf. HUD v. George*, 2 Fair Housing-Fair Lending (P-H) ¶¶ 25,010, 25,166 (HUDALJ Aug. 16, 1991)(respondent's illegal refusal to sell did *per se* force complainant to buy a more expensive property; furthermore, complainant passed on its increased costs of alternative housing to nonprofit agency that operates homes).

[12] A complainant may recover the greater cost of superior alternative housing if the complainant can show that comparable housing at a comparable price was unavailable. *See, e.g., Miller v. Apartments and Homes of N.J., Inc*, 646 F.d 101, 112 (3rd Cir. 1981) plaintiffs forced to pay more for substantially same value after reasonable search); *HUD V. Morgan*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,008 (HUDALJ July 25, 1991)($7,362 awarded for increased carrying costs from purchase date to decision date).

calculated, and Complainant will be awarded this $480 in the Order that follows this decision.

The Secretary further asks for $320 to compensate Gibson for the time spent pursuing his complaint, $400 for 40 calls each to LCMOC and HUD to check on his complaint, and $2,112 for wages lost during 11 days he is claimed to have spent working on filing his complaint, meeting with his attorneys, and attending the hearing in this

case. To the extent that this part of Complainant's claim is for expenses related to litigation, it is not compensable under the "American Rule" that in the absence of a specific statutory provision to the contrary, each party to a proceeding bears its own expenses of litigation.

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[13] The Secretary does not indicate why these requests differ from the amounts testified to by Complainant Gibson.

[14] *See* Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil 2d*, § 1331 (1987 & Supp. 1991) (under the American Rule, even litigants who are defeated in court do not face the risk of having to bear their opponents' expenses as they would in England and most other countries). *See also Hodge v. Seiler*, 558 F.d 284, 287 (5th Cir. 1977) (upheld trial court decision not to award airfare to and from trial, but would not rule out such an award if appropriately made within broad discretion of trial judge, citing strong policies which lie behind remedial civil rights legislation, and the need to ensure that those who defend their rights are not financially penalized).

But see Blackwell, 2 Fair Housing - Fair Lending (P-H) at 25,011 (lost wages for time to consult with attorneys and to attend hearing on temporary restraining order and hearing before ALJ); *Properties Unlimited*, 2 Fair Housing - Fair Lending (P-H) at 25, 150 (complainant awarded costs for missing four days' work, including two days for hearing and two days for travel to and from hearing); *TEMS Ass'n Inc.*, 2 Fair Housing - Fair Lending (P-H) at 25,311 (complainant awarded litigation expenses incurred in separate but related litigation in another forum); *Murphy*, 2 Fair Housing - Fair Lending (P-H) at 25,311 (complainant entitled to lost wages, baby sitting fees, and travel expenses incurred to attend hearing).

The Secretary also claims that Complainant has suffered considerable emotional distress as a result of Respondents' actions. In addition to actual damages, a Complainant is entitled to recover for this category of damage. *See, e.g., Blackwell, supra,* at 25,001; *Parker v. Shonfeld,* 409 F. Supp. 876, 879 (N.D. Ca. 1976). Because this abstract injury is not subject to being quantified, courts have ruled that precise proof of the actual dollar value of the injury is not required. *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10 Cir. 1973).

The administrative law judge assigned to decide a case of housing discrimination is accorded wide discretion in setting damages for emotional distress, and is guided in determining the size of the award by the egregiousness of the respondent's behavior and the complainant's reaction to the discriminatory conduct. R. Schwemm, *Housing Discrimination Law*, 260-62 (1983). Awards for emotional distress in relevant federal

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The Act authorizes awards of attorneys' fees and traditional litigation costs to a prevailing respondent or intervenor after the decision becomes final. 42 U.S.C. § 3612(p). *See, e.g., HUD v. Dedham Housing Auth.*, 2 Fair Housing - Fair Lending (P-H) 25,031 (HUDALJ May 26, 1991) (complainant/intervenor awarded $6,173 in attorney's fees and $17 in costs).

case law range far and wide, depending on the circumstances. Therefore, a review of federal cases is not very helpful as guidance here.

However, awards of damages for emotional distress have been made by this forum in housing discrimination cases, and these can be looked to for some guidance. In *Blackwell*, $40,000 was awarded to a black couple for the embarrassment, humiliation, and emotional distress of having been denied a house because of their race. This was a clear case of open and blatant racial discrimination perpetrated by a real estate agent. In *Murphy, supra*, awards of $150, $400, $800, $1,000, and $5,000 were made for emotional distress and loss of civil rights, with the award of $150 being made to a party who "... suffered the threshold level of cognizable and compensable emotional distress." (at 25,057). In *HUD v. Guglielmi and Happy Acres Mobile Home Park*, Fair Housing - Fair Lending (P-H), ¶ 25,070 at 25,079, I awarded $2,500 to the Complainant where I found that the Respondents had "... contributed significantly to [Complainant's] actual and perceived loss of civil rights, feelings of embarrassment and humiliation, and general emotional distress" for the better part of a year, and in *HUD v. Baumgardner*, Fair Housing - Fair Lending (P-H), ¶ 25,094 at 25,101, I awarded $500 to a young man who had been discriminated against on the basis of sex "because men are messy tenants". He did not appear to be a man of vulnerable constitution, but he said that he was angry, hurt, and frustrated by the denial of the house he wanted and that it was a source of anger and distress for a few months. Finally, in *HUD v. Jeffre*, Fair Housing - Fair Lending (P-H), ¶ 25,020, *et seq*., I awarded $500 for inconvenience, $1,500 for emotional injury, and $2,500 for loss of housing opportunity to a complainant who had been denied an apartment for herself and a minor daughter on the basis of her familial status.

Complainant says that he was upset, shocked and angered over being denied the opportunity to rent Respondents' apartment and that he remained upset over the incident until the time of the hearing. As noted above, in determining the size of an award for emotional distress, the judge should be guided by the egregiousness of the respondent's behavior and the complainant's reaction to the discriminatory conduct. Here, Respondents have been found to have discriminated on the basis of race, which is a type of discrimination that is likely to raise a great deal of frustration and anger. This was an act of malice and prejudice. *See HUD v. Edelstein*, Fair Housing - Fair Lending (P-H), ¶ 25,018 (HUDALJ 05-90-0821-1, Dec. 9, 1991). While it angered Complainant to be denied the apartment, he was also exposed to the additional stress that evolves from an act that involves malice and prejudice.

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[15] *See, e.g., Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241 (8th Cir. 1983) ($12,402 award for plaintiff's mental anguish, humiliation, embarrassment and stress); *Grayson v. S. Rotundi & Sons Realty Co.*, 1 Fair Housing-Fair Lending (P-H) ¶ 15,516 (E.D.N.Y. Sep. 5, 1984) (compensatory damage awards of $40,000 and $25,000 for two plaintiffs' embarrassment and humiliation); *Parker v. Shonfeld, supra* ($10,000 compensation award for embarrassment, humiliation, and anguish); *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184 (7th Cir. 1982) (allowance of $10,000 to each plaintiff at a time when that court had never before exceeded $5,000); *Cf. Ramsey v. American Air Filter Co., Inc*, 772 F.2d 1303 (7th Cir. 1985) (in employment discrimination case, jury award of $75,000 as compensatory damages for plaintiff's mental distress found excessive, and $35,000 awarded based upon the record).

The discrimination against Complainant took a form similar to that committed against the complainants in *Baumgardner and Jeffre*. In all three cases, the complainants were denied the opportunity to lease in short conversations. In *Baumgardner*, I held that the emotional injury from such an action is not limited to the length of time of the conversation, but continues for an indefinite time thereafter. In *Baumgardner*, as here, the complainant did not appear to be a person of vulnerable constitution, and he said himself that the emotional distress caused by the Respondent "was kind of easy to get over." In *Jeffre*, the Complainant also did not appear to be a person of vulnerable constitution, but I found that her injury was greater because she is a single parent responsible also for the well being of a child rather than a single adult. I also found that, although the government did not make such a claim, the child's uneasiness can only be compensated under these circumstances through compensation to the parent, a fact that obtains with regard to Gibson. Moreover, as stated above, I have found the elements of malice and prejudice in this case which did not exist in *Jeffre*. In light of the fact that I awarded $1,500 for emotional injury in *Jeffre*, where a much lesser amount of emotional distress was described than in this case, and in light of the above discussion concerning prejudice and malice, $10,000 in compensation for Complainant's emotional injury is deemed reasonable and will be awarded in the Order below.

The government also seeks $2,500 in damages for the complainant's loss of housing opportunity. The federal courts have held that damage from the deprivation of a constitutional right can be presumed "even in the absence of evidence that the complainant has suffered any emotional distress, embarrassment, or humiliation." *Citing Hodge v. Seiler*, 558 F.2d 284 (5th Cir. 1977). It is also relevant that it has been held that the amount of compensatory damages should be adequate to redress the deprivation of a complainant's civil rights. *See Corriz v. Narajo*, 667 F.2d 892 (10th Cir. 1981). However, as a general rule, while the amount of damages awarded should compensate for the injury suffered, it should not provide the injured party with a windfall. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

In *Baumgardner* and *Jeffre*, I determined that the respondents' denial of the complainants' right to chose where and under what conditions they would live was a compensable injury, and I awarded $2,500 in damages in each case. The discrimination in this case took a form similar to that in *Baumgardner* and *Jeffre*, and again, the effect was to take away Complainant's right to choose where and under what conditions he would live with his family. However, this form and amount of compensation was overturned by the Sixth Circuit Court of Appeals in *Baumgardner v. HUD ex rel. Holley*, 960 F.d 572 (1992). The Court held that the award was an "unwarranted, subjective, additional assessment beyond the proper measure of compensation damages proven" in the case. It based this holding on a short line of Supreme Court cases that made it

doubtful whether more than a nominal award for the loss of a civil right would survive the Court's scrutiny.

In *Cary v. Piphus*, 435 U.S. 247 (1978), where school officials were found to have suspended students without the benefit of due process, the Supreme Court held that because the right to due process is absolute, its denial is actionable for nominal damages without proof of

actual injury. In *Memphis Community School District v. Stachura*, 477 U.S. 299 (1986), a case brought for violation of First Amendment rights, the Supreme Court specifically held that where the basic statutory purpose of awarding damages is to compensate persons for injuries caused by deprivation of constitutional rights, only nominal damages may be awarded for the vindication of the lost right itself. The Court further stated that, while a trier of fact may not award damages based on a "subjective perception of the importance of constitutional rights," a jury could award both compensatory and punitive damages.

Thus, I am without jurisdiction to award the $2,500 requested by the government for the complainant for the purpose of redressing his loss of "housing opportunity." Instead, I award the "nominal damages" of $1 which appears to be the maximum amount permitted by the Supreme Court.

Civil Penalty

The Government has also asked for the imposition of civil penalties of $10,000 for Bangs and $1,000 for Simpson, which, for Bangs, is the maximum that can be imposed on a respondent who has not been previously adjudged to have committed discriminatory housing practices. *See* 42 U.S.C. § 3612(g)(3)(A); 24 CFR 104.910(b)(3). In addressing the factors to be considered when assessing a request for imposition of a civil penalty, the House Report on the Fair Housing Amendments Act of 1988 states:

> The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When determining the amount of a penalty against respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, and any history of prior violations, the financial circumstances of that respondent and the goal of deterrence, and other matters as justice may require.

It is apparent that Simpson either did not want to sublet her apartment to a black person or thought that Bangs would not do so. In either case, it is clear from her report to Bangs that Gibson is black, that this fact motivated Respondents to resist Gibson's application for the apartment. Thus, this was an act of malice and prejudice which contrasts, for example, with the situation in *HUD v. DiBari*, Fair Housing - Fair Lending (P-H) ¶ 25,036 (HUDALJ September 23, 1992). There, a landlord refused to rent to a person with an infant because he knew the apartment contained lead paint. He feared for the infant's well-being and was concerned over the possibility of a costly law suit. *See also HUD v. Edelstein*, Fair Housing - Fair Lending (P-H) 25,018 at 25,242 (1991).

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[16] *Id*. at 308. *See also,* Schwemm,*supra,* at ¶ 25.3(2)(b).

[17] In *Edelestein* a $5,000 civil penalty was imposed despite recognition that the unlawful discrimination "apparently was not motivated by malice toward the Complainant personally or toward families with children in general, but rather

The degree of culpability involved in this case is tempered by the inexperience of the respondents. It contrasts with the situation in *Blackwell*, where the racial discrimination was committed blatantly and openly by a real estate agent with 25 years of experience. Here an electrician by trade had recently bought two small apartment buildings, and this situation arose during his second attempt to re-rent an apartment. Simpson had no experience with real estate transactions at all; she simply was attempting to sublet her apartment so as not to lose a month's rent. While their discrimination was wrong, it's nature simply did not share the grinding element of evil demonstrated in *Blackwell*. However, Bangs is more culpable than Simpson because he was the owner of the building and, accordingly, the person responsible for preventing discrimination.

There is no evidence that the respondents in this case have been adjudged to have committed any prior discriminatory housing practices. Consequently, the maximum civil penalty that may be imposed on either respondent in this case is $10,000. Moreover, that Respondents have not been previously adjudged to have violated the Act is additional reason to temper the government's reaction to this violation, which was committed soon after the effective date of the Act by persons not adjudged to be much cognizant of changes to the civil law.

The next factor to be considered in calculating the civil penalties is the respondents' financial circumstances. Because evidence regarding their financial circumstances is peculiarly within respondents' knowledge, respondents in Fair Housing cases have the burden of producing such evidence. *Blackwell*, at 25,015; *Jerrard*, at 25,092. In this case, Respondent Bangs stated that he only owns these two six-unit apartment buildings, that he has no other assets but for a few bank accounts containing a few thousand dollars, that his only other income is his electrician's salary, and that frequently the apartments produce a negative cash flow for the month. In Simpson's case, her husband is unemployed, and she and her husband enjoy very little monthly

income. They face major medical bills for herself and their daughter. Thus, Respondents' financial circumstances indicate against major penalties.

As noted above, Congress also desired that a civil penalty be imposed in part to achieve the goal of deterring like conduct. To ensure that Respondents and others get the message and understand that discriminatory treatment of applicants for housing is outlawed by the Act, a civil penalty should be assessed. In that way, housing providers will realize that conduct such as Respondents' is "not only unlawful but expensive." *HUD v. Jerrard*, Fair Housing - Fair Lending (P-H) ¶ 25,005, at 25,092 (1990). Accordingly, a penalty of $5,000 for Bangs and a penalty of $1,000 for Simpson will be imposed by the Order that follows later.

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was the result of a baseless universal policy ostensibly designed to preclude injuries to children." *DiBari*, Respondent's policy was not baseless since his apartment buildings were old enough that they must contain lead-based paint. In *Edelstein*, the administrative law judge stated that even if safety concerns may in some cases justify attempts to discourage a prospective tenant from renting, the respondent in that case failed to demonstrate that his concerns were well-founded.

Injunctive Relief

Section 812(g)(3) of the Fair Housing Act also authorizes the administrative law judge to order injunctive or other equitable relief to make the complainant whole and to protect the public interest in fair housing. "Injunctive relief should be structured to achieve the twin goals of insuring that the Act is not violated in the future and removing any lingering effects of past discrimination." *Blackwell II*, 908 F.d 864, at 874 (quoting *Marable v. Walker*, 704 F.d 1219, 1221 (11th Cir. 1983)).

The purposes of injunctive relief in housing discrimination cases include the elimination of the effects of past discrimination, the prevention of future discrimination, and the positioning of the aggrieved persons as close as possible to the situation they would have been in but for the discrimination. *See, Park View Heights Corp. v. City of Black Jack*, 605 F.d 1033, 1036 (8th Cir. 1979), *cert. denied*, 445 U.S. 905 (1980). Once a judge has determined that discrimination has occurred, he has "the power as well as the duty to use any available remedy to make good the wrong done'." *Moore v. Townsend*, 525 F.d 482, 485 (7th Cir. 1975) (citation omitted).

Here, injunctive relief is necessary to ensure that Respondent Bangs will not conduct himself in like manner. To that end, the Government has requested that the Respondent be ordered to cease certain activities and undertake certain other actions. These requests are reasonable and are appropriate under the totality of the circumstances of this case. Accordingly, for the most part, they will be imposed, and the specific provisions of injunctive relief are set forth in the Order issued below.

Order

Having concluded that Respondents Karin Simpson and Timothy Bangs violated provisions of the Fair Housing Act that are codified at 42 U.S.C. §§ 3604(a), and (b), as well as the regulations of the U.S. Department of Housing and Urban Development that are codified at 24 CFR 100.50(b)(1)-(3), it is hereby

ORDERED that,

1. Respondents are permanently enjoined from discriminating against Complainant, Earl E. Gibson, or any member of his family, with respect to housing, because of race, color, or familial status, and from retaliating against or otherwise harassing Complainant or any member of his family. Prohibited actions include, but are not limited to, all those enumerated in the regulations codified at 24 CFR Part 100 (1989).

2. Respondent Bangs shall institute record-keeping of the operation of his rental properties which is adequate to comply with the requirements set forth in this Order, including keeping all records described in paragraph four of this Order. Respondent shall permit representatives of HUD to inspect and copy all pertinent records at reasonable times after

reasonable notice.

3. Consistent with 24 CFR Part 110, Respondent Bangs shall display the HUD fair housing poster in a prominent common area in all the buildings in which he maintains rental units.

4. On the last day of every third month beginning March 31, 1993, and continuing for three years, Respondent Bangs shall submit reports containing the following information regarding the previous three months, for all properties owned or otherwise controlled by Respondent, to HUD's Chicago Regional Office of Fair Housing and Equal Opportunity, 77 West Jackson Boulevard, Chicago, Illinois 60604-35-7, provided that the director of that office may modify this paragraph of this Order as deemed necessary to make its requirements less, but not more, burdensome:

a. a duplicate of every written application, and written description of every oral application, for all persons who applied for occupancy of all such Respondent's property, including a statement of the person's race or color, whether the person was rejected or accepted, the date of such action, and, if rejected, the reason for the rejection;

b. a list of vacancies at all such Respondent's properties including the departed tenant's race or color, the date of termination notification, the date moved out, the date the unit was next committed to rental, the race or color of the new tenant, and the date that the new tenant moves in;

c. current occupancy statistics indicating which of the Respondent's properties are occupied by blacks;

d. sample copies of advertisements published or posted during the reporting period, including dates and what, if any, media was used, or a statement that no advertising was conducted;

e. a list of all persons who inquired in any manner about renting one of Respondent's units, including their names, addresses, race or color, and the dates and dispositions of their inquiries; and

f. a description of any rules, regulations, leases, or other documents, or changes thereto, provided to or signed by any tenants or applicants.

5. Respondent Bangs shall inform all his agents and employees, including resident managers, of the terms of this Order, and he shall educate them as to these terms and the requirements of the Fair Housing Act.

6. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondents shall pay damages in the amount of $10,481 to Complainant to compensate him for the losses that resulted from Respondents' discriminatory activity.

7. Within forty-five days of the date that this Initial Decision and Order is issued, Respondent Bangs shall pay a civil penalty of $5,000 and Respondent Simpson shall pay a civil penalty of $1,000 to the Secretary, United States Department of Housing and Urban Development.

8. Within fifteen days of the date that this Order is issued, Respondents shall submit reports to HUD's Chicago Regional Office of Fair Housing and Equal Opportunity that sets forth the steps they have taken to comply with the other provisions of this Order.

This Order is entered pursuant to section 812(g)(3) of the Fair Housing Act, which is codified at 42 U.S.C. § 3612(g)(3), and HUD's regulations that are codified at 24 CFR 104.910. It will become final upon the expiration of thirty days or the affirmance, in whole or in part, by the Secretary within that time.

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Robert A. Andretta
Administrative Law Judge

Dated: January 5, 1993.

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by ROBERT A. ANDRETTA, Administrative Law Judge, HUDALJ 05-90-0293-1, were sent to the following parties on this 5th day of January, 1993, in the manner indicated:

_____
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